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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

FERNANDO JUAREZ, Plaintiff and Appellant, v. LAW FIRM OF HIGBEE & ASSOCIATES, Defendant and Respondent.	G054016 (Super. Ct. No. 30-2014-00734637) O P I N I O N

Appeal from a postjudgment order of the Superior Court of Orange County, Mary Fingal Schulte, Judge. Affirmed.

Ostergar Law Group, Allen C. Ostergar III and Treg A. Julander for Plaintiff and Appellant.

Law Firm of Higbee & Associates, Mathew K. Higbee and Ryan E. Carreon for Defendant and Respondent.

* * *

INTRODUCTION

Fernando Juarez appeals from a postjudgment order granting the motion of the Law Firm of Higbee & Associates (Higbee & Associates) to recover its attorney fees. Higbee & Associates had prevailed against Juarez on his complaint for negligence and breach of an engagement agreement (the Engagement Agreement) whereby Higbee & Associates had undertaken to represent him in his marital dissolution action. The trial court granted Higbee & Associates' motion for attorney fees based on paragraph 11 of the Engagement Agreement, which states: "Disputes arising out of this transaction shall be adjudicated in Orange County Superior Court in the State of California. Losing party to pay attorney fees and courts costs."

Juarez contends the trial court erred because paragraph 11 is not an attorney fees provision and, if it were, is not broad enough to encompass disputes arising out of Higbee & Associates' handling of his marital dissolution action. We interpret paragraph 11 de novo and, viewing it as part of the entire Engagement Agreement, conclude it permits the prevailing party in disputes arising out of Higbee & Associates' legal representation of Juarez to recover attorney fees. We therefore affirm.

FACTS AND PROCEDURAL HISTORY

Juarez's ex-wife filed a petition for dissolution of their marriage in January 2013. The couple had previously executed a prenuptial agreement. In July 2013, Juarez engaged Higbee & Associates to represent him in the dissolution action pursuant to the Engagement Agreement.

In the first part of a bifurcated trial, the family court found the prenuptial agreement was invalid. Juarez thereafter signed a stipulated judgment in which he agreed to pay his ex-wife $40,000 and to declare the prenuptial agreement invalid. Attorney Mathew K. Higbee signed the stipulated judgment on Juarez's behalf in May 2014. In *In re Marriage of Sandra Georgi-Juarez and Fernando Juarez* (June 17, 2016, G050639)

(nonpub. opn.) a panel of this court dismissed Juarez's appeal from a judgment entered on the stipulated judgment.

Juarez retained new counsel to represent him in the marital dissolution proceedings. In July 2014, Juarez brought this lawsuit against Higbee & Associates. Juarez asserted causes of action for legal malpractice and breach of the Engagement Agreement arising out of Higbee & Associates' representation of him in the marital dissolution action. In addition to damages, Juarez sought recovery of "Attorneys' Fees incurred as provided by contract and statute." Higbee & Associates moved for summary judgment. The trial court granted the motion and judgment was entered in favor of Higbee & Associates. We affirmed the judgment in *Juarez v. Law Firm of Higbee & Associates* (Nov. 22, 2017, G052792) (nonpub. opn.).

Higbee & Associates brought a motion for attorney fees based on paragraph 11 of the Engagement Agreement. The trial court granted the motion and awarded Higbee & Associates $32,645.50 in attorney fees. In a minute order, the court made this finding: "[T]he attorney's fees provision is broad enough to cover the legal malpractice claim, along with the breach of contract claim. The attorney's fees provision is not limited to enforcing the terms of the agreement, but is broad and encompasses disputes 'arising out of this transaction. . . .' A legal malpractice claim is a dispute that arises out of the retaining of Defendant's legal services." Judgment on the cost bill, including the attorney fees award, was entered in August 2016. Juarez timely appealed.

DISCUSSION

Juarez does not challenge the amount of attorney fees awarded: He contends only that the Engagement Agreement does not permit their recovery. The appeal thus turns on the meaning of paragraph 11 of the Engagement Agreement.

I.

Background Law and Standard of Review

Attorney fees, when authorized by contract, are allowable as costs. (Code Civ. Proc., § 1033.5, subd. (a)(10).) Code of Civil Procedure section 1021 leaves the "measure and mode of compensation" for attorney fees to the agreement of the parties. Civil Code section 1717 governs attorney fees awards for enforcing contracts that include fee-shifting clauses. Section 1717, subdivision (a) awards attorney fees to the "party prevailing on the contract, whether he or she is the party specified in the contract or not."

"Fee agreements between attorneys and their clients 'are evaluated at the time of their making [citation] and must be fair, reasonable and fully explained to the client. [Citations.] Such contracts are strictly construed against the attorney. [Citations.]' [Citations.] Client agreements are construed by the court under traditional principles of contract interpretation [citation], and 'any uncertainties [are resolved] in favor of a fair and reasonable interpretation.' [Citation.] If ambiguities are present in the engagement agreement, they are to be resolved 'in favor of the client and against the attorney.'" (*M'Guinness v. Johnson* (2015) 243 Cal.App.4th 602, 617-618.)

Foremost among the traditional principles of contract interpretation applicable to attorney fee agreements is the basic goal of giving effect to the parties' mutual intent at the time of contracting. (*Founding Members of the Newport Beach Country Club v. Newport Beach Country Club, Inc.* (2003) 109 Cal.App.4th 944, 955 (*Founding Members*).) "When a contract is reduced to writing, the parties' intention is determined from the writing alone, if possible" and "'[t]he words of a contract are to be understood in their ordinary and popular sense.'" (*Ibid.*) We also consider the circumstances under which the contract was made, and the matter to which it relates. (Civ. Code, § 1647; *Founding Members, supra*, 109 Cal.App.4th at p. 955.)

"[I]nterpretation of a contract is a question of law we review de novo when, as here, the parties offer no extrinsic evidence on the contract's meaning." (*Colaco v.*

Cavotec SA (2018) 25 Cal.App.5th 1172, 1200-1201, citing *Founding Members, supra,* 109 Cal.App.4th at p. 955.) Here, the parties offered no extrinsic evidence of the meaning of paragraph 11 of the Engagement Agreement. We therefore interpret the scope and meaning of paragraph 11 de novo based on the Engagement Agreement's language alone.

II.

The Engagement Agreement Permitted Higbee & Associates, as Prevailing Party, to Recover Attorney Fees.

Paragraph 11 of the Engagement Agreement reads in full: "VENUE & COSTS. Disputes arising out of this transaction shall be adjudicated in Orange County Superior Court in the State of California. Losing party to pay attorney's fees and court costs." Juarez parses the two sentences of paragraph 11 separately and, based on the second sentence, asserts paragraph 11 is not an attorney fees provision at all. If the second sentence is construed as an attorney fees provision then, Juarez contends, the first sentence cannot be construed to encompass his lawsuit for legal malpractice and breach of contract.

In keeping with the principle that "[t]he whole of the contract is to be taken together, so as to give effect to every part" (Civ. Code, § 1641), we construe both sentences of paragraph 11 together and as part of the Engagement Agreement as a whole. Viewed this way, paragraph 11 is not ambiguous but is an attorney fees provision requiring the losing party to pay attorney fees to the prevailing party in any dispute for breach of the Engagement Agreement, including breach based upon claims of legal malpractice. Because we conclude paragraph 11 is not ambiguous, we decline to construe it against Higbee & Associates.

The second sentence of paragraph 11 requires the losing party to pay attorney fees without expressly identifying whose fees must be paid. The only reasonable interpretation is the second sentence means the losing party agrees to pay attorney fees to

the prevailing party. The interpretation urged by Juarez—that the second sentence means the losing party must pay his or its own attorney fees—is not reasonable. There would be no need for a contract recital that the losing party pays its own attorney fees because that is already the law absent a fee-shifting statute or contract. Contract interpretations that render provisions "surplusage" are disfavored. (*Boghos v. Certain Underwriters at Lloyd's of London* (2005) 36 Cal.4th 495, 503.) While a contract term is not surplusage merely by conferring a right guaranteed by statute (*id*. at p. 504), the second sentence of paragraph 11 is surplusage under Juarez's interpretation because it only mentions the losing party. The implication of Juarez's argument is that paragraph 11 means the prevailing party must pay his or its own attorney fees too. Had the parties intended to confirm the rule that neither the prevailing nor the losing party could recover attorney fees (or would bear his or its own fees), the parties would have said precisely that—or nothing at all. By saying instead that the "Losing party" is "to pay attorney's fees," the parties expressed an intent that the losing party would pay the attorney fees of the prevailing party. Attorneys and laypersons alike would read paragraph 11 in this manner.

The second sentence of paragraph 11 must refer to the losing party in disputes within the meaning of the first sentence of paragraph 11. This is the only reasonable interpretation because the two sentences are placed next to each other as part of the same paragraph. Thus, under paragraph 11, the losing party must pay attorney fees to the prevailing party in any dispute "arising out of this transaction."

The meaning of the word transaction, though not used elsewhere in the Engagement Agreement, can be discerned by reference to the nature of the contractually agreed-upon services. By means of the Engagement Agreement, the parties agreed Higbee & Associates would provide legal services for Juarez "on the terms set forth below." Under paragraph 2, Juarez hired the attorneys "to provide legal services in client's family law case," and the attorneys agreed to "perform such work as is necessary, in the best professional judgment of the attorney" and to "properly represent the client in

his/her family law matter." The "transaction" contemplated by paragraph 11, when construed as part of the agreement as a whole, would necessarily include the legal services that are explicitly identified in the Engagement Agreement.

The word transaction is used only in paragraph 11 of the Engagement Agreement, which elsewhere uses the term "the Agreement" or "services." To Juarez, this choice of words is significant because it suggests Higbee & Associates, which drafted the Engagement Agreement, intended paragraph 11 to mean something different from disputes arising out of the agreement or the services rendered. The decision to use the word transaction in paragraph 11, instead of agreement or services, does not resolve the question of what the word transaction was intended to mean. It is entirely reasonable to conclude the word transaction was intended to include, yet have a broader meaning than, the provision of legal services rendered pursuant to the Engagement Agreement.

Citing The New Oxford American Dictionary (2d ed. 2005), Juarez contends the word transaction means, in its popular and ordinary sense "an instance of buying or selling something; a business deal." Using that definition, he argues paragraph 11 must be narrowly construed as limited to disputes arising out of buying attorney services and "the financial aspects of the business deal." Dictionaries often are useful starting points for discerning the meaning of a contract term (*Lueras v. BAC Home Loans Servicing, LP* (2013) 221 Cal.App.4th 49, 74) so long as we bear in mind that "such examination does not necessarily yield the 'ordinary and popular' sense of the word if it disregards the [contract]'s context" (*MacKinnon v. Truck Ins. Exchange* (2003) 31 Cal.4th 635, 649).

Dictionaries are not uniform in their definitions of "transaction," and it also has been defined in a somewhat different sense to mean "something transacted; *esp*: an exchange or transfer of goods, services, or funds." (Merriam-Webster's Collegiate Dictionary (11th Ed. 2004) p. 1327, col. 1.) Under this definition, the word transaction in paragraph 11 could mean the exchange or transfer of attorney services for compensation.

In this sense, transaction would include the rendering of those services, and, therefore, any dispute "arising out of this transaction" would include disputes over the nature and quality of attorney services rendered in exchange for compensation under the terms of the Engagement Agreement. The latter interpretation makes more sense given the context in which the word transaction appears in the Engagement Agreement.

DISPOSITION

The postjudgment order granting Higbee & Associates' motion for attorney fees is affirmed. Respondent may recover costs on appeal.

FYBEL, J.

WE CONCUR:

ARONSON, ACTING P. J.

IKOLA, J.